

AJC Council Meeting Minutes

10am-12pm, 5 February 2021 (by Zoom)

Attendees:

Sir Ernest Ryder (Chair)	Master, Pembroke College, Oxford University
Andrea Coomber	Director, JUSTICE
Lindsey Poole	Director, Advice Services Alliance
Donal Galligan	Chief Executive, Ombudsman Association
Sir Wyn Williams	President of Welsh Tribunals
Katrin Shaw	Chief Legal Adviser & Director of Investigations, Welsh Public Services Ombudsman
Ken Butler	Welfare Benefits and Policy Advisor, Disability Rights UK
Michael Reed	Principle Legal Officer, Free Representation Unit
Paul Yates	Head of Pro Bono, Freshfields
Caroline Sheppard OBE	Chief Adjudicator, Traffic Penalty Tribunal
Naomi Creutzfeldt	Reader in Socio-Legal Studies, Westminster University
Robert Thomas	Professor of Public Law, Manchester University
Rosemary Agnew	Scottish Public Services Ombudsman
Bill Dowse	Ministry of Justice
Ray Burningham	Consultant and former CEO of the AJTC
Brian Thompson	Hon. Senior Research Fellow, Liverpool University
Tom Thomas	Deputy Chair, Civil Mediation Council
Lord Stephen Woolman	Scottish President of Tribunals
Wyn Williams	Welsh President of Tribunals
Rhiann Davies Rees	Head, Welsh Tribunals
Lord Low	Chair, AJC/JUSTICE Benefits Reform Working Group
Richard Kirkham	Senior Lecturer, University of Sheffield
Samantha Pullin	Director of Litigation, HMRC
David Greensmith	Project Manager, Agencia
Richard Wood	Director, Agencia
Sarah Smith	Public Law and Law in Wales, Law Commission
Henni Ouahes	Head of the Public Law and Law in Wales Team, Law Commission
Awen Edwards	Research Assistant, Law Commission
Paula Stevenson	Head of Devolved Tribunals, Scottish Government
Maurice Sunkin	Professor of Public Law and Socio Legal Studies, Essex University
Stephanie Needleman	Administrative Justice lawyer, JUSTICE
Heidi Bancroft	Secretary to the AJC, JUSTICE
Sally Hunt	Legal Administrator, AJC, JUSTICE
Lola Afolabi	AJC Intern

Apologies:

Michaela McAleer	Acting Deputy Ombudsman/Commissioner, Northern Ireland Public Services Ombudsman
Richard Guyatt	Partner, Womble Bond Dickenson
Warren Seddon	Director of Strategy and Insight, PHSO
Niki Maclean	Scottish Public Services Ombudsman

Kate Gregory-Smith	Deputy Director of Courts & Transparency Team, MoJ
Lucy Scott-Moncrief	Scott-Moncrief
Sir Justice Peter Lane	President, Immigration and Asylum Chamber, Upper Tribunal
Karen Ashton	Head of Public Law and Human Rights, Central England Law Centre

1. Welcome and Chair’s Update

Sir Ernest Ryder (“the Chair”) opened the meeting and welcomed attendees and observers. The Chair explained that since the last full Council meeting in July, two consultation responses had been submitted – the first to the Justice Select Committee’s future of legal aid call for evidence and secondly to the Independent Review of Administrative Law. The Independent Human Rights Act Review (IHRAR) was asking for submissions by 3 March 2021. Any members interested in assisting with a short response should contact the Secretariat.

The AJC newsletter had been published in November, and the next edition would be published in mid-March. Contributions from members were welcome.

Sir Ernest reported that the new Senior President of Tribunals, Sir Keith Lindblom, had expressed an interest in taking up the role of Chair.

The Chair welcomed two new members to the Council – Lord Stephen Woolman, Scottish President of Tribunals, and Samantha Pullen of HMRC. Two observers from Agencia were in attendance.

Actions: All members to consider offering assistance with a response to the IHRAR via the Secretariat; all members to consider submitting content to the March newsletter to the Secretariat.

2. Minutes of the last meeting

The July minutes were approved as a proper record.

3. Panel Updates

The Chair invited the Panel Chair’s to provide an update on their work, the background of which were in the [papers](#).

a) Advice Sector Panel – Lindsey Poole (LP)

DWP Lesson Learning

LP directed members to the accompanying papers on page 8 of the circulated bundle. The Panel had been working with Pro Bono Economics on a methodology for this ongoing project. LP noted that the resultant report would be ready for the next Council meeting in July; and published in September.

Social Care Project

LP reported that the Panel were continuing to support the work of Access Social Care who were producing a report that focused on access to legal aid in social care law. Of particular interest to the Panel was first instance decision-making by local authorities together with the complaints system. The Panel’s aim was to set up a roundtable event in the early summer to bring about further discussion between key stakeholders.

b) Academic Panel

i) Windrush – Robert Thomas (RT)

RT explained that following the Windrush webinar in September 2020, and a subsequent investigation by the Parliamentary and Health Services Ombudsman (PHSO), the Panel was keen to set up a working party to enable further consideration of the compensation scheme. A report of the webinar was on page 9 of the papers. Interested members were invited to contact RT.

ii) Serbia – Robert Thomas

RT offered a brief background on his visit to Serbia in 2019 when he spoke to its administrative court judges and civil servants about the AJC and how a similar model could be used there. He and Heidi Bancroft (HB) had more recently met Agencia to discuss setting up a similar body in Serbia. They were waiting for confirmation of sponsorship but hoped that, once they had the go ahead, they would provide an update at the next meeting.

iii) NHS/Justice Nexus – Naomi Creutzfeldt (NC)

NC updated members on this project that aimed to research advice centres at hospital settings. They were undertaking initial research on four hospital settings and the longer-term aim was to complete a pilot project to consider how the NHS might save money by providing advice in healthcare settings nationally. The project team included herself, Diane Sechi, Heidi Bancroft, a health economist and a JUSTICE intern.

iv) Advice provision during the pandemic

NC explained that this survey followed up Diane Sechi's digitisation survey from last year. The idea came out of the Benefit's Reform working party's sub-groups on claimant support. It aimed to ascertain how advice providers were coping with remote advice delivery during the pandemic. 133 responses had been received and a report would be published in mid-February.

c) Pro Bono Panel – Paul Yates (PY)

PY provided more details on the complaints project that would be launched in the coming months (see page 4 of accompanying papers). The project would look at complaints referred from frontline organisations within specified areas of systemic maladministration. A report would follow based on the data collected. PY asked members for suggestions of systemic maladministration to be forwarded to him. Katrin Shaw offered assistance with complaints should Welsh firms be involved in the project.

Actions: Members interested in joining a Windrush working party to contact RT; suggestions of systemic maladministration to be forwarded to PY.

4. Reforming Benefits Decision-Making Working Party – Lord Low of Dalston

Lord Low directed attendees to the full paper on the working party. He noted that the working party was progressing well, giving particular thanks to Stephanie Needleman as rapporteur. He had been pleased that DWP had joined the last meeting and had made collaborative and positive contributions.

There were questions raised regarding medical assessments and recording of the same, and whether disabled claimants would be allowed to choose what form their assessment might take. It was confirmed that there was a recommendation on this issue whereby DWP should consider the wishes of each claimant. On the subject of recording, the report would include a recommendation to automatically record every assessment with an opt out option for the claimant only.

The report would be published in the Spring and the Council would have the opportunity to comment on the final draft before publication.

5. Ombudsman Reform

a) ‘A Manifesto for Ombudsman Reform’ webinar – Richard Kirkham (RK)

RK directed members to the full [report](#) on this webinar. Having published a series of essays last year, RK and Chris Gill hosted this event in the light of own initiative powers recently having been granted to the Public Service Ombudsman in Wales and Northern Ireland. Chaired by Naomi Creutzfeldt, the event gave the opportunity for both schemes to provide updates on their first investigations, and for a general discussion between all speakers about possible next steps for further reform. Another event would be held later in the year which would include more external stakeholders.

b) Own Initiative Powers – Katrin Shaw (KS)

KS spoke of Wales’ investigation into homelessness which focused on how local authorities administered their homelessness review processes. Three local authorities had been chosen for the purpose of the investigation – Cardiff Council, Carmarthenshire County Council and Wrexham County Borough Council. The aim was to complete the investigation by the end of 2021 and KS looked forward to reporting back to the Council on its findings. The Public Service Ombudsman had also instigated three further own initiative investigations in relation to single complaints received.

Rosemary Agnew reported that the Scottish Public Service Ombudsman’s new role of Independent National Whistleblowing Officer would be going live from 1 April 2021. She provided some background on the role including its responsibilities, accessibility, and the requirement for absolute confidentiality for complainants.

6. Law Commission’s Consultation: Devolved Tribunals in Wales – Sarah Smith, Law Commission (SS)

SS introduced this [consultation](#) that had opened just prior to Christmas and would run until 19 March 2021 – the report would be published later in the year. They were looking at the devolved tribunals in Wales – Mental Health Review, SEND, Residential Property, Agricultural Land, the Adjudicator Panel for Wales and the Welsh Language Tribunal. The Commission had been tasked with considering how the current rules and procedures could be made more consistent and fit for purpose. Proposals included a single unified first-tier tribunal to include the Valuation Tribunal for Wales and school appeal panels, and the standardisation of procedural rules.

SS provided some background to the proposals and the various options they were considering. Background to the consultation could be found on their website.

The presentation was followed by discussions around interoperability, funding and appeal rights. In particular, the Chair noted the positive relationship between the Senior President of Tribunals and President of Welsh Tribunals and the effectiveness of interoperability as set out in the Welsh Act – he hoped that this would continue.

The Chair encouraged members to respond to the consultation.

7. Impact of the pandemic on courts and tribunal listings – Lindsey Poole (LP)

LP had provided a [background paper](#) in advance of the meeting. Members of the Advice Sector Panel had reported concerns over user experiences of remote hearings, which had been rapidly rolled out in response to the pandemic. Issues included confusion over which form hearings would take, and the form of hearing being changed at the last minute. Access to advice both before and during hearings was also problematic with advisers being refused access to hearings. Real concerns over the impact of these issues on vulnerable users were raised.

The Chair expressed keenness to open up a cross-jurisdictional dialogue and asked that members contact HB with their concerns and/or comments. The need to communicate these issues directly with HMCTS was acknowledged and there was a discussion around the benefits and shortcomings of remote hearings and how the various jurisdictions present were handling these, especially in relation to accessibility and vulnerable users.

The Chair noted that the Centre for Socio-Legal Studies at Oxford had been involved in a research project (funded by ESRC) that advised users on how to engage with remote advice services with video instructions. Experience from the Council on what had worked well would help to inform the project.

Action: Members to contact HB with concerns or comments on the impact of the pandemic on users of the courts/tribunals, and those accessing advice services.

8. Process of New Chair and Membership

The Chair directed members to the Membership Renewal document in the papers and noted that since the last Council meeting, the new Senior President of Tribunals, Sir Keith Lindblom, had expressed interest in becoming Chair. As there was no objection, the Chair asked that Sir Keith Lindblom's expression be formalized, along with the new role of a non-judicial deputy chair.

HB explained that as the AJC was approaching the end of its first three-year term, its membership had been discussed at the last Steering Group meeting. She provided a summary of the draft document on the process of membership for the second term which she asked the Council to ratify. The Council was asked to fully consider the details of the paper and to forward any comments or suggestions to HB so the document could be finalised.

It was agreed to build in a rolling system of membership to mitigate against losing a large number of members every three years; and that some roles would be ringfenced.

Actions: Offer of Chair to be made to Sir Keith Lindblom via the Secretariat; members to fully consider the details of the Council Membership Process document and to forward comments to HB; a rolling system of membership to be built into the document, suggestions for new members to be sent to HB.



9. AOB

On behalf of all members, Andrea Coomber (AC) expressed her utmost thanks to Sir Ernest Ryder for all his assistance with the setting up and chairing of the AJC over the last three years.

ER thanked all attendees and closed the meeting.